

That in respect of events occurring during the Period of Insurance and subject to the terms exceptions and conditions contained herein or endorsed hereon (hereinafter collectively referred to as the Terms of this Policy)."

It is also noted that the relevant provisions in the policy are *in pari materia* with those in *Richards v. Cox*. I hold that the liability of the driver *i.e.* the first defendant, to the injured employee *i.e.* the plaintiff is covered by the insurance policy by virtue of Section II paragraph 2. In the circumstances the Third Party has to indemnify the defendants on the judgement entered for the plaintiff and pay the costs of third party proceeding to the defendants.

Order accordingly.

Solicitors: *Triptipal Singh & Co.; A. Jayadeva; Sangara & Co.*

RE NKM HOLDINGS SDN. BHD.

[O.C.J. (George J.) October 18, 1984]

[Kuala Lumpur — Companies Winding-up No. 108 of 1982]

Company Law — Winding-up petition — Notice in Government Gazette to be published not less than 7 clear days prior to the hearing of petition — Date of publication — Late publication of winding-up petition in Government Gazette — Court has power to fix a new date of hearing — Company (Winding-up) Rules 1972, r. 24(a) — Companies Act, 1965, s. 221.

In this case a winding-up petition was filed by creditors against the Company and the hearing was fixed for December 12, 1983. Under the Companies (Winding-up) Rules, 1972, the petition had to be published in the *Government Gazette* not less than 7 clear days prior to the date of hearing. The *Gazette* of November 24, 1983 was put into circulation on December 12, 1983. A preliminary objection was raised on behalf of the company that the petition has not been advertised in the *Government Gazette* at least 7 clear days prior to the notice.

Held: (1) the requirement of rule 24(a) for publication in the *Government Gazette* 7 clear days prior to the date of hearing had not been met;

(2) despite the statutory presumption and the statutory *prima facie* position in view of the evidence given in this case there was no publication of the *Federal Gazette* of November 24, 1983 until December 12, 1983;

(3) the court has power to dispense with any notice and give such directions as it deems fit. A new date for hearing was fixed.

A [Editorial Note; A notice of appeal in this case was filed on November 8, 1984 under reference no. F.C.C.A. 277 of 1984.]

COMPANIES WINDING-UP.

B W.S.W. Davidson for the petition creditor.

P.S. Ranjan for the company.

Cur. Adv. Vult.

C George J. : The original petition to wind-up NKM Holdings Sdn. Bhd. was by one General Telephone Directory Co. Their petition was successfully opposed, the Court holding that the petitioner was not entitled to present the petition. The Court went on to accede to the application by Pan Malaysia Wood Sdn. Bhd. to be substituted as petitioner. The necessary amendments to the petition were duly made. It was fixed for hearing on the December 12, 1983 on which date Encik W.S.W. Davidson of counsel for the petitioners moved the petition. Encik P.S. Ranjan who appeared for the company informed the Court that he opposed the petition and that he had a preliminary point to take before going into the merits of the petition itself. I heard arguments on the preliminary point and reserved judgment.

F The preliminary point was that the Rule 32 certificate of the Companies (Winding-up) Rules, 1972 (all references to Rules in these pages are to those rules) should not have been issued by the Senior Assistant Registrar. It was contended that the requirements of Rule 24(a) had not been met in that the petition had not been duly advertised in the *Government Gazette* not less than 7 clear days prior to the date of hearing. Encik Davidson submitted that there were no merits in the objection.

H The memorandum of advertisement filed by the solicitors for the petitioner pursuant to Rule 21 is enclosure (27) in the Court file and is dated December 5, 1983. It states that the date of advertisement in the *Government Gazette* was November 24, 1983. Exhibited to the memorandum was a photocopy of what was purported to be the advertisement in the *gazette*. The date on it is November 24, 1983. On December 9, 1983 the Senior Assistant Registrar issued his certificate pursuant to Rule 32 signifying *inter alia* that he was satisfied that the petition had been duly advertised as required by Rule 24. In the face of Rule 21(c), section 61 of the Interpretation Act 1967 and section 81 of the Evidence Act 1950, the Senior

Assistant Registrar was perfectly justified in issuing the certificate at the time that he did so.

The Director of Works of the National Printing Department, one Encik Abdul Aziz bin Yatim gave evidence. He testified that it was his department that printed and published the gazette. He pointed out that the gazette is published fortnightly on Thursday and a copy of a document intended for publication must reach the Government Printing Office not later than the Friday preceding the date of publication. He went on to explain that this gives the Printing Department seven days within which it was hoped that the various processes needed to publish the gazette could be undertaken and completed. This involved *inter alia* setting, proofing, printing and binding. Encik Abdul Aziz went on to candidly admit that the seven days allowed was in fact insufficient. He explained that the seven days period was originally provided for in the days when the gazette ran to some 20 pages. However, these days the gazette could run into many more pages than that and the seven days, he testified, could turn out to be insufficient for having the gazette ready for publication in time. The gazette meant to be published on November 24, 1983 had 174 pages and the seven days allowed was insufficient. He testified that the printing of the gazette of November 24, 1983 was completed only in December 1983. According to Encik Abdul Aziz the best his department seemed to be able to do was to have ready the proofs of the various pages of the gazette by the prescribed date of publication as was the case in respect of the gazette for publication on November 24, 1983. The proofs of the various pages being ready by that date a copy of it could be and is usually given to the person requiring the publication to be made. The witness identified the photocopy of the advertisement exhibited to the memorandum of advertisement filed in Court as being a photocopy of the proof. The witness was asked whether the proof would be made available to parties other than the department's customer who had asked for the publication to be made. He replied in the negative. He said other parties could only be supplied a copy when the gazette was in fact printed and bound. The witness went on to testify that in respect of the gazette of November 24, 1983 the actual printing could only be commenced on November 30, 1983 and was completed on December 9, 1983. The binding of the volumes of the gazette was completed on December 12, 1983. The gazette was put into circulation on that day, December 12, 1983. It was not available to the public prior to that date.

Despite the statutory presumption and the statutory *prima facie* position established by the Rules and/or Sections of the law heretofore referred to, in the face of Encik Abdul Aziz's evidence I had no choice but to conclude that in fact there was no publication of the Federal Gazette of November 24, 1983 until the December 12, 1983. It follows that as far as the amended petition was concerned the requirement of Rule 24(a) for publication in the gazette seven clear days prior to December 12, 1983 had not been met.

En. Davidson I think anticipated that the Court would arrive at that finding of fact and had submitted that in any event I could and should exercise my powers under Rule 194(1) which reads:

"194(1) No proceedings under the Act or the Rules shall be invalidated by any formal defect or any irregularity, unless the Court is of the opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court."

He also asked me to invoke the provisions of section 221(2) of the Companies Act and allot a new date of hearing for the petition and make orders dispensing with the need to advertise the petition.

Section 221(2) is as follows:

"221.(2) The Court may on the petition coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition –

- (a) direct that any notices be given or any steps taken before or after the hearing of the petition;
- (b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules, or by any prior order of the Court;
- (c) direct that oral evidence be taken on the petition or any matter relating thereto;
- (d) direct a speedy hearing or trial of the petition or any issue or matter;
- (e) allow the petition to be amended or withdrawn; and
- (f) give such directions as to the proceedings as the Court thinks fit."

I agree with Encik Davidson that the need to gazette has indeed deteriorated into a mere formality and in the face of the existence of widely circulated daily newspapers has perhaps become an anachronism.

The whole point of advertisement and gazetting of the petition is to give notice of it to the creditors. The newspaper advertisements of the

petition has had that effect.

In all the circumstances of this case the just solution to the problem is for a new date to be allotted for the hearing of the petition.

I hereby exercise the powers given to me by section 221(2) of the Companies Act and direct that this petition be heard at 2.30 p.m. on November 19, 1984. I dispense with the need to advertise the new hearing date whether in newspapers or the gazette. The Court will send notices of the date of the hearing to the parties who have given notice of intention to appear at the hearing of the petition.

The costs of the preliminary objection shall be costs in the cause.

Order accordingly.

Solicitors : Azman, Davidson & Co.; Ng Ek Teong & Partners.

PUBLIC PROSECUTOR v. JAMALI BIN ADNAN

[O.Cr.J. (Shankar J.) December 2, 1984]
[Johor Bahru – Criminal Trial No. 3 of 1984]

Criminal law and Procedure – Control of firearms and ammunition without lawful authority – Caution statement – Information leading to discovery of exhibits – Proof beyond reasonable doubt – Evidence of defence improbable or incredible – Internal Security Act, 1960, ss.57(1)(a) & (b) – Criminal Procedure Code, (F.M.S. Cap. 6) s.113 – Evidence Act 1950, s.27.

Evidence – Control of firearms and ammunition without lawful authority – Caution statement – Information leading to discovery of exhibits.

The accused was tried on 2 charges under the Internal Security Act, 1960. The 1st charge under section 57(1)(a) related to 2 revolvers under his control without lawful authority. The second charge under section 57(1)(b) related to 39 rounds of ammunition under his control without lawful authority. These offences are punishable with death. The main prosecution witness was PW2, a senior police officer, who, acting on information received, formed a raiding party on October 18, as a result of which the accused was arrested. In the course of interview with the accused, the police received certain information leading to the discovery of the subject matter of the 2 charges. On October 20, 1981, PW5, another police officer, recorded a certain statement from the accused, who challenged its admissibility. The crux of the charges was whether the accused was in control of the firearms and ammunition at the material time.

The crux of the defence was that he met a Thai friend who told him that he (Thai friend) had kept some things near a durian tree. The accused did not know what the things were. He was adamant that he had never seen these

A firearms and ammunition before. He insisted that he never at any time said that the guns and ammunition were his.

Held: (1) the statement had been voluntarily made and it was admissible in evidence;

(2) the evidence led by the prosecution, quite apart from any specific statement made by the accused either at the interview, or at the scene, or in his caution statement, proved beyond all reasonable doubt that the guns and ammunition were under the control of the accused as charged;

(3) the accused's evidence as to his alleged meeting with his Thai friend is improbable in the extreme. In all the circumstances, the accused's evidence that he did not know what his Thai friend had kept in the durian plantation and how he had kept it there is quite incredible. There was sufficient independent evidence for the court to find that the prosecution has proved beyond reasonable doubt that it was the accused who buried the revolvers and ammunition and it was he who led the police and assisted them to recover the same. On the evidence, the accused alone had the arms and ammunition under his control;

(4) the accused was found guilty as charged on both counts and was convicted accordingly.

[Editorial Note: The accused's appeal to the Supreme Court (Salleh Abas L.P., Seah & Hashim Yeop A. Sani S.C.JJ.) vide Supreme Court Criminal Appeal No. 52 of 1984 was dismissed on August 23, 1985. The Supreme Court's decision will be reported soon.]

Cases referred to:

- (1) *Public Prosecutor v. Rengasamy* [1974] 1 M.L.J. 223.
- (2) *Public Prosecutor v. Er Ah Kiat* [1966] 1 M.L.J. 9.
- (3) *R. v. Chokhey* A.I.R. 1937 All. 497.
- (4) *Pan Kok Wah v. Public Prosecutor* [1966] 2 M.L.J. 141.
- (5) *Public Prosecutor v. Ang Boon Foo* [1981] 1 M.L.J. 40.
- (6) *Johnston Fear & Kingham v. Commonwealth* (1943) 67 C.L.R. 314.
- (7) *J.W. Hinde* [1977] 64 Cr. A.R. 213.
- (8) *R. v. Woodman* [1974] 1 Q.B. 754, 758.
- (9) *Abdul Manap v. Public Prosecutor* [1952] M.L.J. 140.
- (10) *Haw Tua Tau v. Public Prosecutor* [1981] 2 M.L.J. 49.
- (11) *Mah Kok Cheong v. R.* [1953] M.L.J. 46, 47.
- (12) *Tan Hung Song v. R.* [1951] M.L.J. 181.
- (13) *Public Prosecutor v. Liew Sam Seong* [1982] 1 M.L.J. 223.
- (14) *Ho Ming Siang v. Public Prosecutor* [1966] 1 M.L.J. 252, 256.
- (15) *Datuk Mokhtar Hashim v. Public Prosecutor* [1983] 2 M.L.J. 232, 276.

I CRIMINAL TRIAL.

Miss Chua Meng Hung (Deputy Public Prosecutor) for the Public Prosecutor.

Hassan bin Tan Sri Ibrahim for the accused.

Cur. Adv. Vult.